

**ASSEMBLY BILL**

**No. 1607**

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**Introduced by Assembly Member Fox**

February 5, 2014

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An act to amend Section 6608 of the Welfare and Institutions Code, relating to sexually violent predators.

LEGISLATIVE COUNSEL'S DIGEST

AB 1607, as introduced, Fox. Sexually violent predators.

Existing law provides for the civil commitment of criminal offenders who have been determined to be sexually violent predators for treatment in a secure state hospital facility, as specified. Existing law requires the Secretary of the Department of Corrections and Rehabilitation to refer a prisoner for evaluation by the State Department of State Hospitals when the secretary determines that the person may be a sexually violent predator and specifies the judicial processes necessary for civil commitment as a sexually violent predator, including, but not limited to, the right to a jury trial. Existing law establishes provisions by which a committed person may petition for conditional release. Existing law requires the court, if it decides a petition for conditional release is not frivolous, to give notice, as specified, at least 30 court days prior to the hearing date for the petition.

This bill would instead require the court to give notice of the petition hearing at least 35 court days prior to the hearing date.

Vote: majority. Appropriation: no. Fiscal committee: no.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

1     SECTION 1. Section 6608 of the Welfare and Institutions Code  
2 is amended to read:

3     6608. (a) A person who has been committed as a sexually  
4 violent predator ~~shall be permitted to~~ may petition the court for  
5 conditional release with or without the recommendation or  
6 concurrence of the Director of State Hospitals. If a person has  
7 previously filed a petition for conditional release without the  
8 concurrence of the director and the court determined, either upon  
9 review of the petition or following a hearing, that the petition was  
10 frivolous or that the committed person's condition had not so  
11 changed that he or she would not be a danger to others in that it is  
12 not likely that he or she will engage in sexually violent criminal  
13 behavior if placed under supervision and treatment in the  
14 community, ~~then~~ the court shall deny the subsequent petition unless  
15 it contains facts upon which a court could find that the condition  
16 of the committed person had so changed that a hearing was  
17 warranted. Upon receipt of a first or subsequent petition from a  
18 committed person without the concurrence of the director, the  
19 court shall endeavor whenever possible to review the petition and  
20 determine if it is based upon frivolous grounds and, if so, shall  
21 deny the petition without a hearing. The person petitioning for  
22 conditional release under this subdivision shall be entitled to  
23 assistance of counsel. The person petitioning for conditional release  
24 shall serve a copy of the petition on the State Department of State  
25 Hospitals at the time the petition is filed with the court.

26     (b) If the court deems the petition not frivolous pursuant to  
27 subdivision (a), the court shall give notice of the hearing date to  
28 the attorney designated in subdivision (i) of Section 6601, the  
29 retained or appointed attorney for the committed person, and the  
30 Director of State Hospitals at least ~~30~~ 35 court days before the  
31 hearing date.

32     (c) If the petition for conditional release is made without the  
33 consent of the director of the treatment facility, no action shall be  
34 taken on the petition by the court without first obtaining the written  
35 recommendation of the director of the treatment facility.

36     (d) No hearing upon the petition shall be held until the person  
37 who is committed has been under commitment for confinement  
38 and care in a facility designated by the Director of State Hospitals

1 for not less than one year from the date of the order of commitment.  
2 No hearing upon the petition shall be held until the community  
3 program director designated by the State Department of State  
4 Hospitals submits a report to the court that makes a  
5 recommendation as to the appropriateness of placing the person  
6 in a state-operated forensic conditional release program.

7 (e) The court shall hold a hearing to determine whether the  
8 person committed would be a danger to the health and safety of  
9 others in that it is likely that he or she will engage in sexually  
10 violent criminal behavior due to his or her diagnosed mental  
11 disorder if under supervision and treatment in the community. The  
12 attorney designated pursuant to subdivision (i) of Section 6601  
13 shall represent the state and shall have the committed person  
14 evaluated by experts chosen by the state. The committed person  
15 shall have the right to the appointment of experts, if he or she so  
16 requests. If the court at the hearing determines that the committed  
17 person would not be a danger to others due to his or her diagnosed  
18 mental disorder while under supervision and treatment in the  
19 community, the court shall order the committed person placed with  
20 an appropriate forensic conditional release program operated by  
21 the state for one year. A substantial portion of the state-operated  
22 forensic conditional release program shall include outpatient  
23 supervision and treatment. The court shall retain jurisdiction of  
24 the person throughout the course of the program.

25 (f) Before placing a committed person in a state-operated  
26 forensic conditional release program, the community program  
27 director designated by the State Department of State Hospitals  
28 shall submit a written recommendation to the court stating which  
29 forensic conditional release program is most appropriate for  
30 supervising and treating the committed person. If the court does  
31 not accept the community program director's recommendation,  
32 the court shall specify the reason or reasons for its order on the  
33 record. The procedures described in Sections 1605 to 1610,  
34 inclusive, of the Penal Code shall apply to the person placed in  
35 the forensic conditional release program.

36 (g) If the court determines that the person should be transferred  
37 to a state-operated forensic conditional release program, the  
38 community program director, or his or her designee, shall make  
39 the necessary placement arrangements and, within 30 days after  
40 receiving notice of the court's finding, the person shall be placed

1 in the community in accordance with the treatment and supervision  
2 plan unless good cause for not doing so is presented to the court.

3 (h) If the court denies the petition to place the person in an  
4 appropriate forensic conditional release program, the person may  
5 not file a new application until one year has elapsed from the date  
6 of the denial.

7 (i) In a hearing authorized by this section, the committed person  
8 shall have the burden of proof by a preponderance of the evidence,  
9 unless the report required by Section 6604.9 determines that  
10 conditional release to a less restrictive alternative is in the best  
11 interest of the person and that conditions can be imposed that would  
12 adequately protect the community, in which case the burden of  
13 proof shall be on the state to show, by a preponderance of the  
14 evidence, that conditional release is not appropriate.

15 (j) Time spent in a conditional release program pursuant to this  
16 section shall not count toward the term of commitment under this  
17 article unless the person is confined in a locked facility by the  
18 conditional release program, in which case the time spent in a  
19 locked facility shall count toward the term of commitment.

20 (k) After a minimum of one year on conditional release, the  
21 committed person, with or without the recommendation or  
22 concurrence of the Director of State Hospitals, may petition the  
23 court for unconditional discharge. The court shall use the  
24 procedures described in subdivisions (a) and (b) of Section 6605  
25 to determine if the person should be unconditionally discharged  
26 from commitment on the basis that, by reason of a diagnosed  
27 mental disorder, he or she is no longer a danger to the health and  
28 safety of others in that it is not likely that he or she will engage in  
29 sexually violent criminal behavior.